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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION
HONORABLE JOHN W. HOLCOMB, U.S. DISTRICT JUDGE

ROSS CORNELL, et al.,)	
)	
Plaintiffs,)	Certified Transcript
)	
vs.)	Case No.
)	5:22-cv-00789-JWH-SHK
OFFICE OF THE DISTRICT ATTORNEY,)	
COUNTY OF RIVERSIDE, et al.,)	
)	
Defendants.)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
MOTION HEARING
FRIDAY, JULY 8, 2022
8:57 A.M.
SANTA ANA, CALIFORNIA

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1 **SANTA ANA, CALIFORNIA; FRIDAY, JULY 8, 2022**

2 **8:57 A.M.**

3 - - -

08:57AM 5 THE COURTROOM DEPUTY: The Court calls Case
6 Number EDCV 22-00789-JWH(SHKx), Ross Cornell versus Office of
7 the District Attorney, County of Riverside.

8 Counsel, please state your appearances, first for
9 the plaintiff.

08:57AM 10 MR. DARNELL: Good morning, Your Honor. David
11 Darnell on behalf of plaintiffs. Also present is my colleague,
12 Mr. Gaurav Reddy.

13 THE COURT: All right. Good morning, Counsel.

14 MR. SMITH: Good morning, Your Honor. Doug Smith
08:58AM 15 for the County of Riverside/District Attorney.

16 THE COURT: And good morning, Mr. Smith.

17 MR. SMITH: Sir.

18 THE COURT: All right. We're here on plaintiff's
19 motion for preliminary injunction.

08:58AM 20 Did everyone receive my tentative?

21 MR. DARNELL: We did, Your Honor.

22 THE COURT: All right. So let me hear from
23 plaintiff's counsel first, being on the negative end of the
24 tentative as it were.

08:58AM 25 As I always say, when I issue a tentative, it's

1 truly a tentative. If I had made a final decision, we wouldn't
2 be here. I wouldn't waste your time. I wouldn't waste your
3 clients' money.

4 So feel free to poke holes in it. Tell me where
08:58AM 5 it's wrong. Tell me if there are errors of fact or law.
6 Please don't be shy about attacking it because that's -- I want
7 to get it right, and I want to get to the truth. So let's do
8 it that way.

9 I do have some questions. But, Mr. Darnell, why
08:59AM 10 don't I just -- why don't you start where you want to start and
11 tell me what you want to tell me, and then I think my questions
12 will arise kind of organically.

13 MR. DARNELL: Very good. May I use the podium?

14 THE COURT: Yes, please.

08:59AM 15 MR. DARNELL: Thank you, Your Honor. And thank you
16 for preparing the tentative. It was very helpful.

17 Your Honor, I have a few points that I'd like to
18 address in the tentative. The primary issue, though, is that
19 the tentative is, obviously, based on abstention and the
08:59AM 20 *Younger* doctrine or exceptions thereto, but it does not answer
21 the critical questions of whether the DA's prosecution
22 conflicts with federal law, more particularly, federal ADA law
23 as it relates to standing.

24 Now, the Court, I assume, knows that the DA's views
09:00AM 25 on ADA standing are at the core of the underlying prosecution.

1 In the criminal Complaint, the DA contends that the claims of
2 ADA standing in three underlying federal lawsuits were false or
3 deceitful because Estrada "manufactured ADA violations" and
4 "did not have standing to sue." I'm quoting from the
09:00AM 5 opposition at page 20. It's also listed there multiple --
6 excuse me -- multiple times.

7 So the fundamental issue here is does Estrada have
8 lawful standing under the ADA statute or not? There can only
9 be fraud or deceit if his claims about standing are false.

09:00AM 10 That is the fundamental issue. And that ties into the critical
11 analysis as it relates to the *Younger* exception for bad faith.

12 THE COURT: Let me follow up on that, if I may. I
13 want to make sure I understand your argument here. Let's say
14 that the criminal court in Riverside County agrees with your
09:01AM 15 position and finds that Mr. Estrada did have standing -- does
16 have standing -- I guess did have standing to prosecute these
17 three ADA cases. Could it not also be true that Mr. Estrada
18 made false statements in those three Complaints?

19 MR. DARNELL: No, Your Honor. I don't think it --

09:01AM 20 THE COURT: Okay. That's the piece that -- I don't
21 quite understand why that is the case.

22 MR. DARNELL: Because the fraud and the deceit here
23 all goes to the issue of standing. The fraud is that he never
24 went to these facilities. Now, we now know the evidence before
09:01AM 25 the Court in the reply that's at Docket 34-12. He did go.

1 There was a contemporaneous photograph of him with Corona
2 Animal Hospital right behind him, Your Honor. There's also
3 photographs demonstrating that he encountered a first-access
4 barrier parking violation that violate the ADA requirements.

09:02AM 5 THE COURT: So is it the only -- the County, in
6 making its assertion that there are false statements in the
7 Complaints -- is it true that the only thing the County is
8 pointing to is that Mr. Estrada was never there at these three
9 sites? Or aren't there other things that the County is
09:02AM 10 pointing to as being false?

11 MR. DARNELL: There's two things. The first thing
12 is that he was never there. That's been disproven. The second
13 theory is the problem that we have with ADA law. The second
14 theory of the ADA is that he had an improper motivation or he
09:02AM 15 didn't have a legitimate motivation to be there; that he did
16 not intend to use the services of the building; that he did not
17 intend to use the services of the business.

18 THE COURT: And your point is that's the County's
19 misunderstanding, deliberate or not, of the ADA law?

09:03AM 20 MR. DARNELL: Yes. Ninth Circuit controlling
21 authority under *CREEC*, Your Honor.

22 THE COURT: I got that.

23 MR. DARNELL: Yes. Okay.

24 THE COURT: So the County, though, I think, does not
09:03AM 25 concede these two points. The County in particular does not

1 concede the factual point that Mr. Estrada was physically
2 present and that his statement in the Complaint is not false
3 because he was physically present at these three locations.
4 The County does not concede that; correct?

09:03AM 5 MR. DARNELL: The County -- well, I don't know if
6 they concede whether he was in the parking lot or not.

7 MR. SMITH: We don't concede that.

8 MR. DARNELL: Okay. The County does not concede
9 that, Your Honor.

09:03AM 10 THE COURT: Okay. So let me play devil's advocate
11 with you. Sounds like Mr. Estrada has a great defense to the
12 criminal prosecution, and it may fall apart quickly. If you're
13 right, it may fall apart pretty quickly.

14 MR. DARNELL: Correct.

09:04AM 15 THE COURT: And good for Mr. Estrada. I mean, I'm
16 not pulling for him or anything in the criminal prosecution.
17 But if you're correct, he will prevail, one would assume, in
18 the criminal prosecution. But that's not this case. So long
19 as there's a dispute of fact here, why should I -- it sounds
09:04AM 20 like you're asking me to adjudicate that and say, "Gee, you're
21 right. Mr. Estrada was there. This is a faulty criminal
22 prosecution, and I'm going to put a stop to it right now."

23 Is that what you're asking me to do?

24 MR. DARNELL: No, Your Honor.

09:04AM 25 THE COURT: Okay.

1 MR. DARNELL: I'm asking you to adjudicate the First
2 Amendment right to petition the courts. I'm asking you to
3 adjudicate the anti-retaliation provisions in the ADA and how
4 those two issues, constitutional and congressional, under the
09:04AM 5 ADA statute bar the DA's flawed legal theory. By bringing a
6 flawed legal theory under the ADA, Your Honor points, "Well, go
7 win. Go win that issue."

8 I would essentially -- I'm not a criminal defense
9 counsel, but criminal defense counsel would have to argue
09:05AM 10 before 12 jurors about what Ninth Circuit juris prudence means
11 under ADA standing law and what is allowed and what's not
12 allowed and why intent doesn't matter. They would be arguing a
13 legal issue which this Court -- Your Honor in particular; I've
14 seen your own rulings as well as other district courts in this
09:05AM 15 building -- other court -- judges in this building -- as well
16 as the Ninth Circuit have always held that is a legal issue.

17 Federal ADA standing is a legal issue to be decided
18 by the federal judge. It's decided as a threshold matter when
19 you first look at the Complaint. And it's decided based upon
09:06AM 20 numerous cases, some of which are complex, dealing with ADA
21 standing. There's a large history of case law that's involved
22 here.

23 To ask 12 jurors to decide that legal issue in a
24 state court is not an adequate remedy. To ask a criminal judge
09:06AM 25 presiding over that case is not an adequate remedy when all of

1 the cases clearly hold these are preliminary legal issues on
2 federal law to be decided by the federal courts.

3 THE COURT: So is the argument that you're making
4 now -- well, let me say it this way. One of the things that
09:06AM 5 caught my attention from all the papers was -- a question arose
6 in my mind. Does the State of California have a sufficient
7 interest in preventing and punishing the filing of meritless or
8 false ADA cases, given that ADA is a federal statute?

9 Is that the point that you're making now?

09:07AM 10 MR. DARNELL: I would agree with your point that the
11 State does have some interest in prosecuting false or meritless
12 Unruh type of actions. The ADA statute is a different issue,
13 but I will concede that.

14 THE COURT: That's where I was going to go next is
09:07AM 15 these cases are both ADA federal statute and the Unruh Act is
16 under California law.

17 MR. DARNELL: They are. But to follow up on your
18 point, Your Honor, the State does have an interest in
19 prosecuting meritless, false statements in connection with
09:07AM 20 Unruh claims. Again, meritless, false. The whole analysis
21 here under the *Younger* exception and whether the DA's
22 prosecution is objectively reasonable requires the Court to
23 look at the claims about ADA standing, to look at are they
24 right when they say he did not properly intend to go into this
09:08AM 25 building. He did not have the right motivation and, therefore,

1 his claims before the federal court are fraudulent.

2 That is a legal issue that goes to the heart of
3 whether the DA's Complaint, the criminal matter, is objectively
4 reasonable or not. At page 8, Your Honor notes that that is
09:08AM 5 what the Court has to consider when deciding whether the
6 *Younger* exception applies.

7 And particular, it's in the middle of the page,
8 Your Honor, you site to *Kugler vs. Helfant*. It starts at
9 line 15 at page 8 of the tentative. Quote:

09:08AM 10 "In the *Younger* abstention context, bad faith
11 'generally means that the prosecution has been
12 brought without a reasonable expectation of
13 obtaining a valid conviction.'"

14 That's the standard. That's what the Court needs to
09:08AM 15 apply.

16 THE COURT: So you're arguing that the bad faith
17 exception to the *Younger* abstention applies here. And the bad
18 faith is that the County knows that this is a -- this is a
19 crummy prosecution. It's based on a -- it's based on a faulty
09:09AM 20 legal theory?

21 MR. DARNELL: Generally, yes. I wouldn't make it
22 subjective, Your Honor. To me, it's an objective standard, an
23 objectively unreasonable standard. Because you can have a DA
24 who is misguided or doesn't know the ADA ins and outs of the
09:09AM 25 law and thinks this should be illegal under the ADA, but it's

1 not as a matter of law.

2 So if they are misguided or uninformed or just don't
3 know the nuances of the ADA standing requirements, of which
4 there are many, that DA may have a subjective belief that the
09:09AM 5 prosecution is legitimate, that they're going to obtain a
6 conviction, but they're wrong as a matter of law. And if the
7 DA is wrong as a matter of law, the prosecution, by definition,
8 is objectively unreasonable.

9 THE COURT: And objectively unreasonable equals bad
09:10AM 10 faith or, I should say, necessarily triggers the bad faith
11 exception to the *Younger* abstention?

12 MR. DARNELL: Absolutely.

13 THE COURT: I understand that point. Thank you.

14 MR. DARNELL: Now, I think I hit on this -- and
09:10AM 15 Your Honor asked me to point out flaws, so I apologize.

16 THE COURT: Don't apologize. Attack this. It's
17 your job.

18 MR. DARNELL: Throughout the tentative, it ignores
19 the elephant in the room. The critical issue here is is the
09:10AM 20 DA right or wrong? Can the DA claim that these ADA lawsuits
21 were fraudulent or manufactured or false because of something
22 having to do with Estrada's intent? Not under Ninth Circuit
23 controlling precedent. That is the elephant in the room. That
24 has to be analyzed under the definition that Your Honor has for
09:11AM 25 bad faith and what that means at page 8 of the tentative.

1 The tentative says nothing about ADA standing. It
2 says nothing about the DA's contentions about never visiting.
3 It says nothing about the evidence before this Court that says,
4 "Not so fast. He was there." And it says nothing about the
09:11AM 5 flawed legal argument about intent and ADA standing.

6 So we need a complete analysis of those issues as it
7 relates to the *Younger* exception before the Court can
8 ultimately decide is it objectively reasonable or is the DA's
9 case objectively unreasonable, as we contend.

09:11AM 10 THE COURT: In the *Younger* case itself -- trying to
11 refresh myself on the facts of that case -- there was the -- at
12 issue in the underlying criminal case was the California
13 state's Criminal Syndicalism Act, S-y-n-d-i-c-a-l-i-s-m. The
14 argument is that that act was void for vagueness and
09:12AM 15 overbreadth. I think the District Court and the Circuit --
16 well, this was an odd three-judge District Court, I think, in
17 *Younger*; correct? And then it went to the Supreme Court.

18 In any event, the underlying federal court found
19 that the state's criminal act was indeed void for vagueness and
09:12AM 20 overbreadth. And here, in the *Younger* case, Justice Black,
21 writing for the Court, says the federal court should abstain
22 and let this work its way through.

23 So aren't you asking me to do what the *Younger* case
24 itself says that the federal court should not do?

09:13AM 25 MR. DARNELL: I am not asking you to do -- well,

1 one, I would tell you that, if that's what *Younger* actually
2 holds, we would never have an exception. And we do have
3 exceptions under established case law.

4 There's a reason that we have exceptions. The only
09:13AM 5 thing, by the way, that *Younger* holds, *Younger* sets the
6 standard for abstention. It doesn't set the standard for
7 exceptions to abstention. And the critical cases that I do
8 want to point the Court's attention to are cited in our
9 opposition, one being *World Famous Drinking Emporium*, which is
09:13AM 10 a Ninth Circuit case from 1987.

11 Your Honor, you also cite to that at page 8 of your
12 tentative for the proposition that bad faith prosecution or
13 harassment would make abstention inappropriate even when the
14 *Younger* requirements are met. So there's your answer,
09:14AM 15 Your Honor.

16 THE COURT: Is that the best Ninth Circuit case
17 talking about the bad faith exception to *Younger* abstention?

18 MR. DARNELL: Well, I think the *Kugler* case that
19 Your Honor cited to in the tentative is equally good in
09:14AM 20 providing a sufficient definition with the objectively
21 reasonable requirement, objective belief that it will result in
22 a valid conviction. So I think that those two cases are pretty
23 important for the Court's analysis.

24 But *World Famous* is also significant because the
09:14AM 25 Ninth Circuit clarified that the exception to *Younger* can and

1 will apply where the prosecution is intended to discourage the
2 assertion of constitutionally protected rights.

3 The ADA cases here -- the underlying ADA cases here
4 involve the assertion of constitutionally protected rights as
09:15AM 5 codified by Congress in the ADA statute. And the prosecution's
6 criminal Complaint against the lawyer and his client for
7 bringing ADA claims infringes upon the First Amendment right to
8 petition the courts for redress.

9 It also results in an incredible chilling effect as
09:15AM 10 evidence by the material submitted to the Court. No filings
11 having been submitted because, as soon as you file something,
12 we're going to get another amendment to the criminal Indictment
13 or the criminal Complaint or a new criminal Complaint based
14 upon their theory, which we contend is wrong as a matter of
09:15AM 15 law.

16 THE COURT: Say the last part again. You're saying
17 as soon as I rule, there will be a --

18 MR. DARNELL: The evidence -- and I apologize if I
19 wasn't clear. The evidence before this Court in our moving
09:15AM 20 papers and the reply show that Cornell and Estrada have
21 visited -- that Estrada has visited facilities which have
22 violations, that he encountered access barriers, and lawsuits
23 have not been filed because of the chilling effect from the
24 DA's prosecution. The concern being that, if the DA contends
09:16AM 25 that intent or motive is somehow relevant in the other cases,

1 they're going to try to bring another flawed legal criminal
2 Complaint based on any new cases that are filed by Estrada or
3 Cornell. There has been a chilling effect, and the evidence of
4 that is before the Court.

09:16AM 5 THE COURT: All right. Thank you.

6 MR. DARNELL: My colleague just reminded me that
7 *Diamond* is another case, a Ninth Circuit case, dealing with the
8 exception to *Younger*. That's cited in your opposition -- I'm
9 sorry -- in your tentative, Your Honor. It's also cited in the
09:16AM 10 moving papers and the reply. It's at page 9 of the tentative.

11 THE COURT: *Diamond D.*

12 MR. DARNELL: *Diamond D.*

13 THE COURT: That's a Second Circuit case.

14 MR. DARNELL: Oh, I apologize. It is a Second
09:16AM 15 Circuit case, you are correct. For some reason, my notes
16 indicated it's a Ninth Circuit. But I do see in their
17 tentative it's Second Circuit.

18 THE COURT: Well, I think it's Second Circuit. In
19 your reply papers I think you don't give what circuit it's --
09:17AM 20 in your reply papers, page ii, in the Table of Authorities,
21 line 16, is a *Diamond D* case. You say that it's 2002, but you
22 don't say what circuit.

23 MR. DARNELL: In the moving papers, Your Honor,
24 that's Docket 22-1, (ii), we cite to *Diamond D* as well. It's
09:17AM 25 in page 24 of the actual motion, but (ii), that does reference

1 Ninth Circuit 2002. Now --

2 THE COURT: Hold on one second. Let me get there.
3 Okay. I'm in your --

4 MR. DARNELL: Docket 22-1, Roman numeral ii.

09:18AM 5 THE COURT: Right. So there you cite *Diamond D*.
6 You're on line 27?

7 MR. DARNELL: Correct.

8 THE COURT: As a Ninth Circuit case. But is it?

9 MR. DARNELL: I believe it is.

09:18AM 10 **(Counsel conferred off the record.)**

11 MR. DARNELL: Okay. My colleague just clarified,
12 Your Honor. I apologize. It is a Second Circuit case, and I
13 apologize for making that error in our moving papers.

14 THE COURT: Okay. Is there a *Diamond D* analog in
09:18AM 15 the Ninth Circuit?

16 MR. DARNELL: I would contend that the *Diamond D*
17 analog in the Ninth Circuit is *Kugler*. Well, that's a U.S.
18 Supreme Court case.

19 There is *World Famous* that does acknowledge that bad
09:18AM 20 faith prosecution or harassment is an exception. So
21 *World Famous* is a Ninth Circuit case that seems to be
22 consistent with the *Diamond D* case. Because bad faith is,
23 obviously, consistent with *Diamond D's* holding of a prosecution
24 initiated by retaliation, harassing, or other illegal motives.

09:19AM 25 THE COURT: So you made the argument earlier that

1 there's an objective standard that bad faith doesn't
2 necessarily have to mean that, in this instance, the
3 prosecutor, the County of Riverside, has some objective bad
4 intent; that bad faith can arise from simply a faulty legal
09:19AM 5 theory, even if it's a mistakenly faulty legal theory --

6 MR. DARNELL: Correct.

7 THE COURT: -- correct?

8 MR. DARNELL: Correct.

9 THE COURT: What's the case that stands for that
09:19AM 10 proposition?

11 MR. DARNELL: Well, I believe it's based on a
12 reasonable interpretation of the *Kugler* holding by the
13 U.S. Supreme Court in 1975. "Reasonable expectations," the
14 language that's there, that's the word that the U.S. Supreme
09:19AM 15 Court adopted.

16 As the Court probably knows, whenever we're talking
17 about reasonable expectations, that's always adjudicated from
18 the objective standard. The subjective reasonable expectations
19 are not relevant to -- when you're talking about an issue of
09:20AM 20 bad faith because you can always have somebody who is either --
21 has the blinders on, is refusing to know the law, refusing to
22 do what they need to do. It has to be judged from an objective
23 standard and not the subjective views of the prosecuting DA.

24 THE COURT: Okay.

09:20AM 25 MR. DARNELL: By the way, if it was subjective,

1 every case of prosecutorial misconduct would arguably meet the
2 requirement that it was subjectively reasonable in the eyes of
3 that prosecutor to do what they did. And that cannot be the
4 standard of law.

09:20AM 5 THE COURT: Are plaintiffs also advancing the theory
6 here that the prosecution, the defendant here, was acting in
7 subjective bad faith? I mean, your papers, I think a few
8 times, talk about the, I'll call it, aggressive execution of
9 the search warrant on Mr. Estrada.

09:21AM 10 When it comes to -- I don't think there's a lot of
11 information on this in the papers, but when it comes to the
12 press release, I don't know how common a press release like
13 that is. I don't know if the County is issuing a press release
14 for almost every arrest. I kind of doubt it. But what
09:21AM 15 triggers the County to issue such a press release? Are there
16 lots of them? Are there few of them? Is this one typical? Is
17 this one unusual in some sense in either substance or tone? I
18 don't know all of those things.

19 But the question -- with all the musing, the
09:21AM 20 question is are plaintiffs saying that the prosecutor is acting
21 in bad faith?

22 MR. DARNELL: Both objectively and subjectively.

23 THE COURT: Okay. And I assume you're pointing to
24 all the things that I just referenced?

09:22AM 25 MR. DARNELL: Well, those are some of the things.

1 The other thing is the declaration from Deputy District
2 Attorney Tim Brown before this Court. In the opposition he
3 purports to say all kinds of things that he has no personal
4 knowledge of, but he says them under penalty of perjury.

09:22AM 5 THE COURT: So there are lots of -- I'll comment
6 there are lots of evidentiary objections. I've looked at
7 those. I haven't ruled on them -- I thought about them -- but
8 I didn't think I needed to in view of the tentative, if I stick
9 with the tentative.

09:22AM 10 MR. DARNELL: If Your Honor sticks with the
11 tentative, I suppose we don't get that far. But, again, my
12 critique of the tentative is that it's flawed because it
13 doesn't consider the underlying claims and the evidence, which
14 is required for the objectively reasonable analysis.

09:23AM 15 And I just want to point out, Your Honor, it's not
16 just the evidentiary objections. We submit that Mr. Brown has
17 outright lied to this Court. He has stated that Cornell would
18 text -- send text messages to Mr. Estrada about specific
19 businesses and locations on where to go.

09:23AM 20 That is false. There is no record of that before
21 the Court. We provided the Court with a certified transcript.
22 That is a false statement under penalty of perjury.

23 He's also made statements that there is no evidence
24 that Mr. Estrada ever visited these locations. Obviously,
09:23AM 25 there is evidence now with the reply. At the time of -- at the

1 time of his opposition, he didn't have the benefit of those
2 photographs. So I'll give him that leeway.

3 But there is actually evidence in the DA's own file.
4 They have geolocation data showing that Mr. Estrada was at
09:24AM 5 these locations. So their prosecution, in claiming he was
6 never there, is undermined by their own evidence in their own
7 search warrant.

8 THE COURT: Did the prosecution have that evidence
9 when the prosecution initiated the criminal -- initiated the
09:24AM 10 criminal prosecution?

11 MR. DARNELL: Yes, Your Honor. They signed a search
12 warrant, under penalty of perjury, on March 4, 2022.

13 THE COURT: But how much of this information,
14 this -- what's the word I'm looking for? Exculpatory
09:24AM 15 information. How much exculpatory information did the
16 prosecution have at that time?

17 MR. DARNELL: I believe they had -- the exculpatory
18 information I'm referring to, as described in their search
19 warrant of early March 2022, that includes geolocation data,
09:24AM 20 cell tower data for Estrada's cell phone, showing that he was
21 in the proximity of Corona Animal Hospital for 90 minutes on
22 the day in question. Despite that, they have now come before
23 this Court and said there's no evidence that he was ever there.

24 THE COURT: What's the status of the criminal
09:25AM 25 prosecution? I know there was a hearing set on the demurrer on

1 July 1st. I don't know what happened. What's the status now?

2 MR. DARNELL: I believe -- I will have to defer to
3 my colleague on more details. I don't want to speak out of
4 turn or misstate. But my understanding is that there was
09:25AM 5 another continuance. So no rulings, no formal arraignment.

6 MR. SMITH: I'm not sure about the arraignment.

7 MR. DARNELL: I'm not sure about the arraignment
8 either.

9 But no formal rulings on any merit-based issues.

09:25AM 10 And I think the prosecution did recently provide some
11 discovery, including the search warrant that I just described.
12 But I don't think all discovery has been provided in that
13 criminal case.

14 THE COURT: But it does not look, from your
09:25AM 15 perspective -- your perspective and your client's perspective,
16 that the prosecution is backing down and will abandon this
17 case?

18 MR. DARNELL: I have not yet seen any indication of
19 that, Your Honor.

09:26AM 20 THE COURT: Okay. Thank you for the aside. Please
21 continue. Poke more holes.

22 MR. DARNELL: Yes, Your Honor. Let me see if I
23 can -- I think I made my -- my most significant point that I
24 want the Court to understand is that the analysis of the
09:26AM 25 District Attorney's theory of ADA standing and deceit and fraud

1 before the federal courts, that has to be included in the
2 *Younger* abstention exception analysis in the Court's tentative,
3 and it is not.

4 The Court also does make a comment -- I appreciate
09:26AM 5 the question. The Court asked at page 2 of the tentative:

6 "...what happens when those same ADA
7 litigants conduct high-frequency litigation
8 fraudulently and deceitfully..."

9 The Court continues by saying "That question is not
09:26AM 10 before the Court here."

11 I think that's incorrect, Your Honor. That question
12 is before the Court here. That question has to be answered.
13 It's wrapped up into the *Younger* exception.

14 THE COURT: So the question that's before the Court
09:27AM 15 is if there's evidence that the high-frequency ADA litigants
16 are not behaving fraudulently and deceitfully, then that
17 question is before me?

18 MR. DARNELL: I believe it's before Your Honor.

19 THE COURT: And if I conclude that they are not
09:27AM 20 behaving fraudulently and deceitfully, then I should issue the
21 requested injunction?

22 MR. DARNELL: Yes. I would phrase the question
23 slightly differently. What happens when the prosecution's
24 theory of fraud contradicts and undermines the ADA statute and
09:27AM 25 Ninth Circuit precedent?

1 Another issue, stated differently, what happens when
2 the state prosecution conflicts with the U.S. Constitution,
3 federal act of Congress, the ADA?

4 THE COURT: Now, let's say you're dead right, that
09:28AM 5 all of your evidence about why plaintiffs were not behaving
6 improperly in any way -- you're dead right about all that.
7 They're vindicated. The criminal prosecution either fails with
8 an acquittal or is dropped.

9 Don't your clients still have remedies available to
09:28AM 10 them a Section 1983 lawsuit or -- I'm not going to be their
11 lawyer, but I can think of many things that perhaps they could
12 do. Is that not the case?

13 MR. DARNELL: Well, they do have a remedy,
14 Your Honor. They have filed an ADA retaliation lawsuit in this
09:28AM 15 case. They contend that the State's prosecution violates the
16 ADA's anti-retaliation statute.

17 THE COURT: When you say they filed that case,
18 you're talking about --

19 MR. DARNELL: It's in the First Amended Complaint
09:29AM 20 before Your Honor in this case. It's set forth at page 2,
21 page 1, page 9. The anti-retaliation provisions are cited to
22 extensively in the First Amended Complaint. It's actually
23 paragraph 2, paragraph 9, and paragraph 19 of Docket 18, which
24 is the First Amended Complaint.

09:29AM 25 THE COURT: So I'm looking at that. Which claim for

1 relief are you referring to?

2 MR. DARNELL: Well, it's the injunctive relief claim
3 based upon the criminal prosecution's violation of
4 anti-retaliation and anti-interference provisions. If you want
09:29AM 5 to be more particular, you can look at paragraph 2 and
6 paragraph 19, Your Honor. And the third cause of action is
7 also specifically for violation of the anti-retaliation
8 provision.

9 THE COURT: And what remedies are available to
09:30AM 10 plaintiffs under the third cause of action?

11 MR. DARNELL: Good question, Your Honor. The same
12 remedies that the Court granted in *Dilworth*, which is the civil
13 rights case about the African American men who tried to sit in
14 the nonwhite section, and the DA there prosecuted them. The
09:30AM 15 federal court in that case granted an injunction ultimately.
16 Well, I should say it went up and then it went back down with
17 an order to the trial court to consider the granting of an
18 injunction because the state prosecution violated federal law.

19 THE COURT: So two things. *Dilworth* was Fifth
09:30AM 20 Circuit?

21 MR. DARNELL: Yes.

22 THE COURT: And the answer to my question, what
23 remedies?

24 MR. DARNELL: Injunction.

09:30AM 25 THE COURT: Injunction.

1 MR. DARNELL: I mentioned *Dilworth* because *Dilworth*
2 applies the same exact remedies and the same statutory basis
3 for granting injunctive relief as specifically authorized by
4 the ADA statute. The ADA anti-retaliation provisions
09:31AM 5 specifically reference injunctive relief.

6 THE COURT: Okay. So let's say I ultimately
7 conclude you're dead right on your third cause of action in the
8 First Amended Complaint and I grant an injunction. What does
9 that injunction say? "County, don't prosecute these plaintiffs
09:31AM 10 as you are doing. Stop that"?

11 MR. DARNELL: We've asked for five things in our
12 moving papers, to stay the prosecution; to dismiss the
13 prosecution if the Court finds that it truly does violate -- at
14 this point we're on a preliminary injunction. So, to be fair,
09:31AM 15 Your Honor, your ruling in this case would most appropriately
16 be preliminary in nature. But, ultimately, we will be seeking
17 an order of dismissing the prosecution entirely. But I think
18 at a minimum, at this stage in the preliminary injunction, the
19 Court should stay the prosecution.

09:32AM 20 The DA should be ordered, the third item, to retract
21 its press release concerning the plaintiffs. It's based on a
22 fundamental misunderstanding or a flawed view of ADA law where
23 they've accused an attorney in good standing before the State
24 Bar, before the State, with no criminal history whatsoever, of
09:32AM 25 engaging in fraud and deceit in a public press release, which

1 is highly unusual and perhaps politically motivated,
2 Your Honor. I don't have evidence before that. This is
3 argument.

4 The fourth point is that we want the DA to be
09:32AM 5 restrained and enjoined from interfering with pending lawsuits
6 based on similar flawed views and reasoning about intent or
7 motivation. What they're doing is chilling the First Amendment
8 right to petition the courts and do things that are
9 specifically authorized by ADA juris prudence, particularly
09:33AM 10 *CREEC*, in the Ninth Circuit. What they describe as the
11 manufacturing of ADA claims is an attack on tester ADA claims.

12 The Ninth Circuit and other courts, including the
13 U.S. Supreme Court, have repeatedly referred to testers in
14 similar contexts -- civil rights statutes as well as, in
09:33AM 15 particular, with ADA claims -- as being legitimate plaintiffs
16 with every right to pursue the claims provided by the ADA.
17 This is an attack on those principles, and it's a violation of
18 the fundamental policy behind the ADA statute.

19 The last item is that the District Attorney's Office
09:33AM 20 be restrained and enjoined from using the fruits of its
21 investigation in further acts of, what I will call, unlawful
22 retaliation. I think it's appropriate that the Court phrases
23 the injunctive relief being granted in the context of the DA's
24 flawed or unlawful interpretation of the ADA statute. If they
09:34AM 25 contend somehow that this is actually fraud or deceit and it

1 violates the ADA or violates some other statute, that would be
2 a different issue. And that's not what we're seeking.

3 THE COURT: All right. Thank you. That's helpful.

4 Let me posit a hypothetical world where plaintiffs
09:34AM 5 either did not bring this lawsuit or I go with the tentative
6 and dismiss it.

7 Let's say the prosecution -- the criminal
8 prosecution, again, either moves forward and results in an
9 acquittal or is dropped because the prosecution determines that
09:34AM 10 it has a meritless case. Is it not true that plaintiffs still
11 have remedies -- have more remedies available to them under
12 Section 1983 or otherwise? Could they not still obtain perhaps
13 money damages?

14 I mean, there's an allegation here that these
09:35AM 15 plaintiffs and other ADA plaintiffs have deliberately chosen
16 not to bring new claims because of the existence of this
17 lawsuit. I can see an argument where money damages could arise
18 from that.

19 Are there not remedies available, if all of that is
09:35AM 20 true, at the end of the day?

21 MR. DARNELL: Two things. I would contend that
22 there are remedies available. Being an advocate for my client,
23 I will also recognize that the defense would argue otherwise.
24 The defense would argue that this Court's ruling on the *Younger*
09:35AM 25 abstention doctrine constitutes res judicata or collateral

1 estoppel in the finding that the federal court has no
2 jurisdiction to restrain or to preside over an action against
3 the District Attorney relating to this conduct.

4 So whether it's 1983 or whether it's the ADA
09:36AM 5 anti-retaliation statute that we have, this Court's ruling,
6 they will argue, has collateral estoppel or res judicata effect
7 on other federal claims.

8 The second part of --

9 THE COURT: Do you have any authority, one way or
09:36AM 10 the other, on that? I'll tell you I never regarded the *Younger*
11 abstention of having those broad effects.

12 MR. DARNELL: I think that we would argue -- if that
13 argument was made, we would argue that *Younger* abstention is
14 essentially a jurisdictional or standing preliminary
09:36AM 15 evaluation. But I don't know the answer where the Court would
16 ultimately rule, if that issue was raised.

17 If counsel wants to stipulate that they will not
18 challenge the federal court's jurisdiction in the event a 1983
19 action is filed, then I feel a little bit more comfortable with
09:37AM 20 where we stand. But the issue really that I want to focus on
21 is what's before the Court. What's before the Court is an ADA
22 anti-retaliation claim that's ripe, that's pending, and that's
23 at issue in this case. So I appreciate the hypothetical.

24 I would also note that, if my client prevails in the
09:37AM 25 criminal prosecution, there may be a malicious prosecution

1 claim to be asserted back against them in state court. So
2 there may be other rights and other remedies. But I don't
3 think that should influence the Court's analysis of the rights
4 and the remedies that are presently pending before it.

09:37AM 5 THE COURT: Okay. That's helpful. What else?

6 MR. DARNELL: I think I've hinted on the -- on why
7 we contend 12 jurors is not an adequate forum and a criminal
8 judge in the state court is not an adequate forum. There's
9 numerous cases, that I'm sure Your Honor is aware of, that talk
09:38AM 10 about ADA standing being a threshold legal issue to be
11 determined by the federal courts. And, obviously, there's a
12 plethora of case law addressing that.

13 The last thing I would comment on -- there's two
14 things, Your Honor, the first thing being the Court's
09:38AM 15 opposition seems to make much ado about the state's interest --
16 it starts at the bottom of page 7 and carries over to the top
17 of page 8 -- the state's interest in enforcing the Unruh aspect
18 of the underlying claims or perhaps addressing that. I would
19 respectfully submit that the federal courts, Congress, and the
09:38AM 20 U.S. Constitution have a much more substantial compelling
21 interest in this case.

22 First, the prosecution is directed at statements in
23 federal court in unverified pleadings about the ADA standing.
24 As a result, the federal courts in Congress have a compelling
09:39AM 25 interest in the state court prosecution, particularly when that

1 prosecution conflicts with federal ADA law.

2 The bottom line here, Your Honor, is while the DA
3 may have some interest in the Unruh statute, it's secondary to
4 the federal interest. And, more importantly, the DA is not
09:39AM 5 Congress. It does not have the power to write or revise the
6 ADA statute. It does not have the power to say what
7 Ninth Circuit law is with respect to ADA standing. And it does
8 not have the power to enforce what they contend the ADA says
9 when it violates controlling federal precedent.

09:39AM 10 My last point, Your Honor, is the tentative does
11 not -- and I think I've hinted on this. The tentative does not
12 appreciate or acknowledge the underlying claims. The First
13 Amended Complaint in the injunctive relief is based on
14 constitutional violations, namely, the First Amendment and the
09:40AM 15 right to petition the courts. It's set forth at paragraph 1 of
16 the First Amended Complaint.

17 The First Amended Complaint also alleges how the
18 DA's criminal prosecution violates the ADA anti-retaliation
19 statute. Again, that's the third cause of action in the First
09:40AM 20 Amended Complaint or the third claim. It's also set forth at
21 paragraph 2, paragraph 9, and paragraph 19.

22 Paragraph 19 is kind of the summary paragraph, that,
23 when you want to talk about what this case is about and the
24 constitutional violations and the ADA retaliation issues, there
09:40AM 25 are six bullet points listed in paragraph 19. That's this

1 case, Your Honor. The tentative doesn't acknowledge that, and
2 we believe it should. And we believe that there's case law
3 that specifically notes the U.S. Supreme Court, in particular,
4 in *Dombrowski vs. Pfister*, 380 U.S. 479 at 486. This is cited
09:41AM 5 in our motion at pages 18 to 19.

6 In this case, the U.S. Supreme Court acknowledged
7 that criminal prosecutions need to be more closely scrutinized
8 when they are based on an overbroad sweep or the hazard or loss
9 or substantial impairment of precious constitutional rights are
09:41AM 10 at issue. So we believe that U.S. Supreme Court precedent
11 requires the Court to put the underlying claims in proper
12 context in the tentative, which I don't think those claims have
13 even been noted anywhere in the tentative.

14 Your Honor, I believe I've taken more of the Court's
09:42AM 15 time than I wanted to. I'd be happy to answer any other
16 questions that the Court may have or perhaps after my colleague
17 has an opportunity to address anything before the Court.

18 THE COURT: The -- I think it's the --
19 next-to-the-last major point that you made, you talked about
09:42AM 20 the federal court's interest in -- I'm paraphrasing -- interest
21 in, among other things, ensuring the ADA law is properly
22 enforced. Again, I'm paraphrasing. The challenges to the
23 criminal prosecution that you're raising with me, all of those
24 are available and can be raised with the state court in
09:43AM 25 connection with the criminal prosecution; correct?

1 MR. DARNELL: They can be. But are they adequate?
2 Is the forum adequate?

3 THE COURT: Why would that forum not be adequate?

4 MR. DARNELL: Because -- and I think I touched on
09:43AM 5 this earlier -- all of the ADA cases that address standing, and
6 even standing cases that Your Honor has issued specifically
7 know how that's a threshold legal issue to be determined by the
8 federal court. It's a federal ADA claim. It's before the
9 federal court. It's a, quote, "essential and unchanging part
09:43AM 10 of the case or controversy" requirement for Article III. It's
11 an integral component of subject matter jurisdiction in those
12 underlying cases before the Court. The federal courts know
13 these issues in and out.

14 Criminal courts, 12 jurors sitting in a box in a
09:44AM 15 criminal case in Riverside, they know nothing about this. That
16 is why this Court is more appropriate to adjudicate the ADA
17 standing issues, especially, again, when they tie into *Younger*
18 exception.

19 THE COURT: All right. I understand that point.
09:44AM 20 Thank you very much. And I'll give you a chance to respond to
21 Mr. Smith.

22 MR. DARNELL: Thank you, Your Honor.

23 THE COURT: Thank you.

24 Mr. Smith?

09:44AM 25 MR. SMITH: Thank you, Your Honor.

1 THE COURT: Please, same thing.

2 MR. SMITH: Yes.

3 THE COURT: Please attack the tentative or buttress
4 it. And, of course, please respond to the eloquence of
09:44AM 5 Mr. Darnell.

6 MR. SMITH: Yeah. Thank you, Your Honor.

7 I guess I would start out by -- obviously, the
8 tentative is in favor of the County. So I certainly agree with
9 the tentative.

09:45AM 10 I listened to Mr. Darnell. He raised very good
11 issues. He -- honestly, he did. And I think he argued very
12 eloquently and made some good points, but I don't think they're
13 valid points. And I think the arguments were blending two big
14 issues. One is application of the *Younger* abstention doctrine
09:45AM 15 and what are the elements for application of that abstention
16 and have those elements been met. That's one issue,
17 Your Honor, that involves its own separate analysis. And then
18 whether or not a preliminary injunction should be granted
19 here -- because that's the remedy that's being sought pursuant
09:45AM 20 to this motion for the preliminary injunction -- obviously,
21 that has its own elements, in all likelihood, it's excess and
22 whatnot.

23 And even in the Court's tentative, I believe -- and
24 I don't want to misspeak what the Court was saying, but my
09:46AM 25 understanding of the tentative was we need to first look at

1 *Younger* and whether *Younger* applies before we really even get
2 into the underlying merits that might give rise and warrant an
3 injunction. And so I think --

4 THE COURT: Your point is even if you lose on
09:46AM 5 *Younger* -- that is, I abandon the tentative and do not invoke
6 *Younger* abstention -- you still win in the sense that I should
7 not issue a preliminary injunction?

8 MR. SMITH: That's right, Your Honor. But I'm also
9 saying that I believe a lot of Mr. Darnell's arguments were, I
09:46AM 10 believe, an attack on the prosecution's case. In other words,
11 the merits of the underlying criminal case for which that
12 criminal judge can resolve all of those issues.

13 Now, I understand the way Mr. Darnell was arguing
14 that was that, well, that all relates to that singular
09:47AM 15 exception -- I know there's a couple more than that, but the
16 exception to the *Younger* case that that -- the lack of merit
17 to the prosecution focused on an absence of standing in
18 connection with the ADA claims or lawsuits that were filed,
19 that that constitutes bad faith and, therefore, you know, bad
09:47AM 20 faith is an exception to *Younger*. And I can address that in a
21 few minutes. But, certainly, I believe there's a -- the
22 elements of *Younger*, before we even get to the exception, they
23 all apply here, Your Honor. And I think the Court pointed that
24 out in the tentative.

09:47AM 25 I mean, there's no dispute here that there's, one,

1 an ongoing criminal prosecution, that the proceedings do
2 implicate important state interest. Whether there's federal
3 interest in ADA litigation -- I mean, you even concede that,
4 Your Honor, in your tentative. But the standard for *Younger* is
09:48AM 5 whether the proceedings -- those criminal proceedings implicate
6 important state interest -- and they certainly do, and you
7 pointed them out in the tentative -- and whether or not this
8 proceeding, what's being pursued here, would interfere with
9 those proceedings. And, obviously, they would in terms of the
09:48AM 10 remedy that's being sought here.

11 And then the other big element with respect to
12 *Younger* is whether there are adequate opportunities in the
13 state proceeding to raise these constitutional challenges,
14 which there absolutely are. I mean, there's been a demurrer
09:48AM 15 that's been filed in the criminal case that allows those
16 criminal defendants to make these very same challenges to the
17 criminal judge.

18 THE COURT: I understand Mr. Darnell to be pushing
19 back very hard on the existence of the elements, *Younger*, other
09:48AM 20 than he made the point that the tentative does not deal with
21 the plaintiffs' standing -- I'll call it a standing defense to
22 the criminal prosecution. But I understood Mr. Darnell to be
23 arguing, among other things, the bad faith exception to the
24 *Younger* doctrine.

09:49AM 25 And let me jump straight to that. I do want to hear

1 the rest of your argument, but it was troubling hearing about
2 the -- again, I'll call it an aggressive execution of the
3 search warrant, at least on -- or warrants -- at least on
4 Mr. Estrada. You know, there's a photograph of the SWAT-like
09:49AM 5 police officers -- well, police officers employing SWAT-like
6 tactics to serve a subpoena -- to serve a search warrant,
7 rather, on a gentleman who's a paraplegic and who's not accused
8 of committing any kind of a violent crime. He's accused of
9 filing a paper that had some falsities in it.

09:50AM 10 Why was it necessary to do that?

11 MR. SMITH: I -- well, I don't have that evidence,
12 Your Honor, in terms of what we submitted in our paperwork.
13 Certainly, he was arrested pursuant for violations of Penal
14 Code 115, a felony. There were several felonies, procuring --
09:50AM 15 offering false or forced instruments to public office. He was
16 also arrested for conspiring to violate Business and
17 Professions Code 6128, that prohibits attorneys from engaging
18 in deceit or conclusion [sic]. So there are multiple felonies
19 that he was charged with.

09:50AM 20 So the fact that the -- I think the claim in the
21 moving papers is that he should have been given some kind of
22 advance notice or been permitted to turn himself in. I'm not
23 aware of any legal requirement. And the fact that law
24 enforcement went out there in what is being described as a
09:51AM 25 less-than-pleasant approach to arresting someone or searching

1 someone's home does not give rise at all to a bad faith conduct
2 by a prosecutor.

3 THE COURT: Is that typically the way that the
4 police department executes a search warrant in circumstances
09:51AM 5 like this one?

6 MR. SMITH: I can say it's not untypical,
7 Your Honor. I know this is not before the Court, but I can
8 absolutely represent --

9 THE COURT: Well, it kind of is in the sense of the
09:52AM 10 bad faith.

11 MR. SMITH: Well, anecdotally, Your Honor -- I know
12 this is not evidence before the Court. But in Riverside, my
13 brother-in-law, who works for me, his wife is a nurse. And she
14 apparently neglected to treat bedsores on a patient. That
09:52AM 15 patient ultimately expired, and Emily was charged with a
16 felony. And at 5:00 o'clock in the morning, SWAT team members
17 showed up in Riverside at my brother-in-law's house, surrounded
18 the house, and took her into custody.

19 THE COURT: Okay. So the answer may be that it is
09:52AM 20 typical when executing a search warrant pertaining to an
21 underlying alleged felony.

22 MR. SMITH: Uh-huh.

23 THE COURT: One of the things you said, Mr. Estrada
24 was arrested. Was he arrested? Because I'm looking at
09:52AM 25 Exhibit G of -- well, attached to defendants' opposition

1 papers, which is -- first page is a supplemental report,
2 Riverside County District Attorney supplemental report. And
3 it's provided by -- I'm going to get this name wrong -- Johnny
4 Gubernat, G-u-b-e-r-n-a-t, I believe.

09:53AM 5 In any event, Suspect -- I'm about two-thirds of the
6 way down the page -- Suspect -- "Sus Number 1. Name: Estrada,
7 Bryan Eduardo." Above that, "Arrested: Yes, No," the "No" box
8 is checked. And I think, reading the summary supplemental
9 narrative, the rest of Exhibit G, it does not say -- the person
09:54AM 10 providing this report does not say that Mr. Estrada was
11 arrested.

12 MR. SMITH: Well, he's currently facing felony
13 criminal charges, Your Honor.

14 THE COURT: So at least he was not taken into
09:54AM 15 custody at that time?

16 MR. SMITH: Honestly, Your Honor, I don't know the
17 answer to that. I thought he was.

18 THE COURT: Okay. Well, it's unclear in my mind.
19 But we're talking about the bad faith allegation by plaintiffs.
09:54AM 20 So thank you for your response on the aggressive execution of
21 the search warrant.

22 What can you tell me about the press release? Are
23 those typical? Is this atypical? Does the County issue those
24 in every case where there's some public interest that is not
09:55AM 25 just a -- I don't mean to minimize it, but a common street

1 crime that doesn't -- isn't likely to generate public interest?
2 And was this press release atypical in any way in terms of its
3 substance or tone? What can you tell me about --

4 MR. SMITH: Yeah, the press release, Your Honor, is
09:55AM 5 almost -- I think it's verbatim from the arrest warrant. So
6 the language is pulled from an arrest warrant signed by the
7 judge.

8 They aren't done, obviously, in every single case.
9 We don't see them out in Riverside every single day, but there
09:55AM 10 are various arrest warrants, and then press releases follow.
11 Certainly, matters of public interest. But the fact that --

12 THE COURT: What's the process for issuing a press
13 release based upon an arrest? Who makes that decision and how
14 is it made?

09:56AM 15 MR. SMITH: I believe it's the District Attorney's
16 Office, working through their public information office.
17 Beyond that, I don't know. I don't know all the details with
18 respect to issuance of a press release.

19 THE COURT: And another answer is it's not in the
09:56AM 20 record before me.

21 MR. SMITH: It's not in the record before
22 Your Honor. But I would just point out the fact that there's
23 no evidence that that press release was in any way --

24 THE COURT: Atypical?

09:56AM 25 MR. SMITH: -- atypical, inaccurate, false in any

1 way. And certainly not indicative of bad faith. They were
2 arrested. The facts in the press release are not inaccurate.
3 And even if there were some inaccuracies, there's no indication
4 that that's the result of any bad faith action on the part of
09:57AM 5 the prosecution.

6 THE COURT: What's the current status of the
7 criminal prosecution? We talked a little bit about the hearing
8 that was set for July 1st on the demurrer that apparently, I
9 understand, has been continued. But in view of the additional
09:57AM 10 evidence -- I'll call it information -- that plaintiffs have
11 provided, particularly in their reply papers, has the County
12 rethought this criminal prosecution? Is it going to be
13 dropped? What's the status?

14 MR. SMITH: I don't know the status to that,
09:57AM 15 Your Honor. I will say the evidence that was provided to
16 Mr. Darnell for which he provided to the Court in the reply,
17 that was recently released by the District Attorney, like,
18 within the last few days -- in fact, I wasn't even sure at the
19 time -- within the last week -- couple weeks or so. But I
09:58AM 20 believe the DA released that in the criminal case prior to the
21 actual date that, you know, the prosecutor and the parties were
22 required in that criminal case to disclose evidence. So
23 they're still, I think, fairly early in that process in terms
24 of discovery.

09:58AM 25 For example, the transcript, you know, we got it at

1 the same time that Mr. Darnell did, when it was released by the
2 District Attorney in the criminal case, the audio interview and
3 some of these other things.

4 THE COURT: Housekeeping question. You have filed
09:58AM 5 a -- an application for leave to file a sur-reply.

6 MR. SMITH: I did, Your Honor.

7 THE COURT: And I looked at the sur-reply, I read
8 it. There was no opposition. I guess I should turn this
9 question to Mr. Darnell.

09:58AM 10 Should I just grant that application for leave to
11 file a sur-reply?

12 MR. DARNELL: No, Your Honor.

13 THE COURT: Okay. We'll come back to that.

14 MR. DARNELL: I didn't get an application. The
09:59AM 15 sur-reply -- under the Local Rules you have to file an ex parte
16 application. They just filed it, Your Honor.

17 THE COURT: Well, they filed it with a -- there's a
18 request for leave to file it, which I took it as an ex parte
19 application.

09:59AM 20 MR. DARNELL: Well, Your Honor, you can grant it.
21 But I would say that there's ample authorities that are cited
22 in our reply brief that rebuttal evidence is not new and does
23 not justify --

24 THE COURT: Yes, I saw that.

09:59AM 25 MR. DARNELL: That's the Ninth Circuit case *Toys "R"*

1 *Us.* It's abundantly clear that if you're rebutting what the
2 opposition claims, that does not entitle a party to file a
3 sur-reply.

4 THE COURT: All right. I'm going to grant that
09:59AM 5 application for leave to file a sur-reply. That will be in the
6 minute order memorializing this hearing. But I appreciate what
7 you're saying, Mr. Darnell.

8 Okay. Mr. Smith, sorry, I hijacked your argument
9 with these questions and this housekeeping issue, but please
09:59AM 10 return to it and tell me what else you'd like to tell me.

11 MR. SMITH: Just on the bad faith, Your Honor, I --
12 there's no evidence that the prosecutor is pursuing bad faith.
13 The only thing that's been offered is the press release, the
14 manner of the arrest or the search, and this standing issue,
10:00AM 15 that somehow the prosecutor is misinformed or misunderstands
16 the law and, therefore, that equates to bad faith. And this
17 application of this objective standard rather than a subjective
18 standard constitutes bad faith on the part of the prosecutor.

19 THE COURT: So I understand Mr. Darnell to be asking
10:00AM 20 me to dig into the standing issue.

21 MR. SMITH: Yeah.

22 THE COURT: As I do often in ADA cases. And he
23 asked me to come to the conclusion that plaintiffs here,
24 Mr. Estrada in particular, has standing -- had standing to file
10:01AM 25 those three ADA cases that are at issue. And accordingly, the

1 prosecution's theory in the criminal case is necessarily
2 faulty. And because it's necessarily faulty, the prosecution
3 is acting in bad faith in continuing the criminal prosecution,
4 and I ought to do something about that.

10:01AM 5 Now, my point is he's asking me to dig into this --
6 the criminal standing -- the ADA standing issue. My tentative
7 takes the position, "Well, *Younger* abstention, I'm going to
8 step back from that and let the criminal process take place in
9 state court." I think that's what the tentative says. That's
10:02AM 10 what *Younger* tells me to do as the better course.

11 But should I dig into -- should I dig into the
12 standing issue?

13 MR. SMITH: No. I don't believe the Court should at
14 all.

10:02AM 15 THE COURT: Well, is Mr. Darnell simply wrong in
16 advocating -- in taking the position that Mr. Estrada had
17 standing to prosecute those three cases?

18 MR. SMITH: He is wrong. And the prosecutor has
19 filed criminal charges against Mr. Estrada and his attorney for
10:02AM 20 conspiring and colluding to violate the law, to violate
21 Business and Professions Code 6128. That prohibits deceit and
22 collusion to deceive a party or court; right? So, essentially,
23 bogus ADA claims.

24 I think we've outlined some of the evidence for
10:03AM 25 that, Your Honor. We've submitted the ADA complaints. The

1 DA's position is -- whether you call it standing or elements of
2 the case or a basis for the lawsuit, the DA's position is that
3 he was never out there, could have never observed ADA
4 deficiencies, never intended to go there, was encouraged and
10:03AM 5 told to go there by Mr. Cornell, the attorney, as part of a
6 scheme to pressure and extort these small business owners to
7 pay a few bucks because they could not afford to defend
8 themselves.

9 THE COURT: So the prosecution, the defendant here,
10:03AM 10 disbelieved the evidence that plaintiffs have submitted,
11 particularly in their reply papers, to show that, for example,
12 Mr. Estrada really did, I'll call it, investigate, say, the
13 first place, the vet shop or --

14 MR. SMITH: The prosecution also believes the
10:04AM 15 plaintiffs' own evidence, Your Honor, and that is that the
16 audio interview of Mr. Estrada where he states, yeah, the
17 initial claims were legitimate, and then he's asked questions
18 about all the others, and he specifically asked questions
19 about -- I believe it's one of the three -- I think it might be
10:04AM 20 the vet -- that, yeah, he doesn't remember, he wasn't there,
21 that this was all done at the behest of the lawyer.

22 And, if I may, Your Honor, there was an accusation
23 that continues to be made -- we've addressed it in the
24 sur-reply -- that Deputy District Attorney Timothy Brown
10:04AM 25 committed perjury. There's only one reference in the moving

1 papers and in the reply in terms of Mr. Brown allegedly
2 committing perjury, and that's with respect to Mr. Brown's
3 statement in his declaration that there was texting going on
4 between Mr. Estrada and Mr. Cornell. That's nowhere in the
10:05AM 5 transcript.

6 In our sur-reply, Your Honor, we point out exactly
7 where it is -- exactly where it is as far as the texting that
8 was going on between the two of them, Mr. Cornell texting
9 Mr. Estrada, telling him where to go. So I would like to point
10:05AM 10 that out.

11 THE COURT: So the defendant stands by Mr. Brown's
12 declaration on that particular point?

13 MR. SMITH: We do, Your Honor. Yes.

14 THE COURT: Okay. Please continue.

10:05AM 15 MR. SMITH: I think we've covered the -- we've
16 covered the bad faith. I don't believe it's a purely objective
17 standard. I think in our opposing papers we've cited the *Perez*
18 *vs. Ledesma* case and a quote from it, which I had that in front
19 of me, but the quote is:

10:05AM 20 "In cases of proven harassment or
21 prosecutions undertaken by state officials in bad
22 faith without hope of obtaining a valid conviction
23 and perhaps in other extraordinary circumstances
24 where irreparable injury can be shown, is federal
10:06AM 25 injunctive relief against pending state

1 prosecutions appropriate."

2 So I think that's important to point out, that there
3 is absolutely a good faith basis for these criminal
4 prosecutions. We are at this point where the charges are going
10:06AM 5 forward. There's going to be a criminal trial. Certainly,
6 Mr. Estrada, Mr. Cornell can challenge the prosecution's case
7 before the judge and ultimately before the jury. Adequate
8 remedies to address the constitutional claims are available to
9 him. The -- again, most of the arguments deal with the merits
10:06AM 10 made by Mr. -- I believe -- a lot of them, anyway, deal with
11 the merits of this underlying case.

12 The Complaints themselves, if you have a lawyer who
13 knowingly allows a client to file eight, whether it's ADA or
14 state, lawsuits in which there are knowingly false facts in
10:07AM 15 those Complaints designed to pressure small business owners to
16 pay money and extort money from them, those are criminal
17 violations for which a state attorney, District Attorney can
18 pursue. I suppose an example would be -- and, again, these are
19 why these cases are resolved in the criminal case. That's
10:07AM 20 where they're appropriate from a *Younger* abstention standpoint.

21 Let's say isn't this -- is this any different than a
22 prosecutor -- I know these aren't the facts of our case, but
23 the prosecutor taking the position that Mr. Estrada does not,
24 in fact, have a disability; that he's really not disabled; that
10:07AM 25 he could get up out of his wheelchair and walk over to your

1 assistants or walk over to your clerks.

2 And Mr. Darnell would be arguing, "No, he is
3 disabled. He has a disability. He's in a wheelchair."

4 And the prosecutor would say, "No, we have evidence
10:08AM 5 that he's not disabled." Thus that goes to the underlying
6 criminality of what they were doing with respect to these
7 lawsuits.

8 That's really not any different here. We're saying
9 he wasn't out there, never saw the countertops, never witnessed
10:08AM 10 an ADA violation; that, yeah, you do have to have a reason to
11 go out there. You can't just randomly go around the country,
12 or not go there at all, and just have some lawyer or convince
13 a lawyer -- have a lawyer sign you up to file all these
14 lawsuits.

10:08AM 15 THE COURT: Well, backing up for one a little bit,
16 are you denying the tester standing is legitimate?

17 MR. SMITH: I'm saying that, in this particular
18 case, that is not my understanding of tester standing where
19 he's being told by a lawyer, you know, "We're going to be
10:09AM 20 filing this case" or that case, and the client never goes out
21 to that location; is not, in fact, there; does not, in fact,
22 see the violations.

23 So that would be my position with respect to that,
24 Your Honor.

10:09AM 25 THE COURT: So, hypothetical, let's say there's a

1 place in Riverside County, Acme Distributors. And a lawyer
2 notices -- thinks he notices that Acme Distributors does not
3 have adequate ADA accommodations, whatever it may be -- a curb,
4 handicap accessible, disabled accessible door -- whatever it
10:09AM 5 may be. Lawyer spots that.

6 Lawyer says to client -- disabled client, who lawyer
7 has represented many times before in ADA cases, "Gee, go take a
8 look at Acme Enterprises."

9 Disabled client goes to take a look and says, "Yeah,
10:10AM 10 I agree, Lawyer. Doesn't meet ADA standards." And the two of
11 them file a case. The client, of course, is client, and lawyer
12 is lawyer.

13 Is that a legitimate case? Or is there some defect
14 in it? Put aside whether or not the Acme Enterprises complies
10:10AM 15 with ADA. But the process that they went through to identify
16 that location and to file that case investigation, is that a
17 legitimate case or is it an illegitimate case.

18 MR. SMITH: I guess there would be standing in that
19 particular case. But that's not this case, from the
10:11AM 20 prosecution's perspective.

21 THE COURT: I understand that last point. Thank
22 you. Sorry for the interruption. Please continue.

23 MR. SMITH: Mr. Darnell did talk about the
24 importance of the ADA and the federal interest, obviously, in
10:11AM 25 disabled people being able to pursue violations of the ADA.

1 There is nothing that -- about that interest that means that
2 you can use the ADA, or any other federal statute for that
3 matter, to engage in criminal conduct.

4 You know, I use the example of the disabled person
10:12AM 5 who's not disabled. You know, the ADA doesn't -- there's no
6 federal interest in permitting nondisabled people or people who
7 knowingly do not meet the elements for the claims from pursuing
8 those claims, right? So -- and that's not an element -- as I
9 understand the *Younger* abstention, it's not an element of the
10:12AM 10 *Younger* abstention. You look at whether or not there's
11 compelling state interest in proceeding with the criminal case.

12 As far as the adequate remedies, the Court raised
13 the issue about the 1983 claim. Like, if Mr. -- the Court
14 raises a good point; right? Like, if -- I suppose if he's
10:12AM 15 convicted, right, perhaps he might be barred from pursuing a
16 1983 claim under *Heck v. Humphrey* because, in the civil case,
17 he'd have to seek to invalidate the criminal prosecution. But
18 if he's acquitted, my understanding is he would have a 1983
19 claim that he could pursue.

10:13AM 20 So I'm not aware and I haven't addressed the issue
21 of whether collateral estoppel or res judicata as a result of
22 the *Younger* abstention ruling would bar that subsequent civil
23 lawsuit.

24 THE COURT: Should that be a part of my *Younger*
10:13AM 25 abstention analysis, the availability of these 1983 claims, or

1 something that's well past the resolution of the criminal case?

2 MR. SMITH: It should not, Your Honor, because my
3 understanding of that element of the *Younger* abstention
4 addresses whether or not there are adequate remedies in the
10:14AM 5 underlying state proceeding that allows Mr. Estrada or
6 Mr. Cornell to raise the constitutional challenge that he's
7 making.

8 So, no, I don't -- I just want to address it because
9 it was brought up. But, no, I don't think the Court needs to
10:14AM 10 address that, what ultimate remedies would be available way
11 down the road should the criminal case resolve in Mr. Estrada
12 and Mr. Cornell's favor.

13 I think I've covered the main points, Your Honor. I
14 don't have anything else.

10:14AM 15 THE COURT: I think I asked the so-called
16 housekeeping question. I think that covers what I wanted to
17 ask --

18 MR. SMITH: Okay.

19 THE COURT: -- you, Mr. Smith, on behalf of your
10:15AM 20 client. Okay. Thank you.

21 MR. SMITH: Thank you, Your Honor.

22 THE COURT: Mr. Darnell, did you have some rebuttal
23 to argue?

24 MR. DARNELL: Brief. Very brief.

10:15AM 25 THE COURT: As you can probably tell, I enjoy

1 engaging with counsel and give you plenty of time to make your
2 record and make your arguments.

3 MR. DARNELL: And we appreciate it, Your Honor. We
4 appreciate the Court's time.

10:15AM 5 Just to be clear, I think the Court knows this, but
6 we're not arguing the elements of *Younger*. We're arguing the
7 exception to *Younger*.

8 THE COURT: That's what I understood the case to be.

9 MR. DARNELL: And the exception to *Younger*, as it
10:15AM 10 applies in this context, is much broader than the elements. I
11 mean, it's a huge exception, particularly when the Court looks
12 at the Ninth Circuit opinion in *World Famous Drinking Emporium*
13 *vs. City of Tempe* -- it's a 1987 case -- that confirms that the
14 exception to *Younger* can apply where the prosecution is
10:16AM 15 intended to discourage constitutionally protected rights. That
16 gets into the Section 1983 issue, Your Honor.

17 THE COURT: What's the answer to the question that I
18 posed to Mr. Smith; that is, should I even consider the
19 potential availability of those post resolution of criminal
10:16AM 20 case remedies?

21 MR. DARNELL: To be fair, I think you need to
22 consider the merits of the DA's case for purposes of the
23 *Younger* exception. And I think you can also consider what
24 might happen down the line for potential rights and remedies
10:16AM 25 that could be asserted. I don't think they're dispositive. I

1 don't think they're outcome determinative because a
2 Section 1983 claim, whenever that's brought way down the road,
3 cannot address the ongoing violation of the First Amendment
4 rights that we have here.

10:17AM 5 And, again, that segues back into *World Famous* and
6 why there is a *Younger* exception when you're dealing with
7 constitutional rights. Only an injunction can stop ongoing and
8 continuing violations of constitutional rights. We don't have
9 a time machine in three years that we can go back and rewind
10:17AM 10 all of this, unfortunately.

11 So that's the only thing I wanted to clarify with
12 respect to the 1983 claim. I don't have a problem if the Court
13 were to consider it, but I don't think it's outcome
14 determinative because what we're asking for is an injunction
10:17AM 15 because of constitutional rights.

16 The last point I want to just make briefly is
17 opposing counsel has not stated -- I mean, I'm still at a loss.
18 How were the ADA complaints false or deceitful? How were they
19 bogus? What specifically do you contend -- because the things
10:18AM 20 that I've heard so far or seen in the record never went there.
21 That's been rebutted. He was there. He did go there.

22 "He didn't have a proper intent." Well, that's not
23 consistent with ADA law. It doesn't matter under the *CREEC*
24 Ninth Circuit opinion.

10:18AM 25 "Well, the lawyer told us specifically what

1 businesses to go to." I think I heard counsel argue that just
2 a few minutes ago. That's not what the evidence says. That's
3 not what the record shows.

4 But I will tell Your Honor that, even if that did
10:18AM 5 happen -- it didn't. There's no evidence of that here, that he
6 was directed about a business to go to or a specific business
7 name. That just didn't happen. But even if he did, that's a
8 tester case.

9 THE COURT: And I think Mr. Smith conceded that --

10:18AM 10 MR. DARNELL: I thought so.

11 THE COURT: -- with my Acme Enterprises
12 hypothetical.

13 MR. DARNELL: I thought so. And I'm not aware of
14 any case in the Ninth Circuit or any other federal circuit
10:19AM 15 dealing with ADA testers that has said that it's fraudulent,
16 that scenario is fraudulent, that scenario is deceitful, or
17 that scenario can never support an ADA standing claim. So,
18 apparently, the DA's prosecution is writing novel law or
19 proceeding from that basis.

10:19AM 20 There's one other legal issue. I heard counsel
21 mention the countertop. He never went in. How could he know
22 about the countertop? That issue is specifically addressed in
23 the reply brief and in the reply declaration from Cornell in
24 Docket 34-1.

10:19AM 25 Mr. Cornell attaches Exhibit 2. And in paragraph 5

1 of his declaration, he says, "I reviewed the photograph of the
2 interior lobby space of Corona Animal Hospital before I filed
3 the suit. The photograph showed the counter height was too
4 high and would have created an access barrier for Mr. Estrada."

10:20AM 5 As Your Honor undoubtedly knows, *Doran vs. 7-Eleven*,
6 Ninth Circuit case (2007), an ADA plaintiff, once they
7 encounter one barrier, has the right to sue for all barriers,
8 including those discovered through inspection by an expert or
9 discovered by counsel.

10:20AM 10 That is the law in the Ninth Circuit. That's the
11 law in this courtroom. And that is the law that the DA doesn't
12 like and that the DA's prosecution is challenging.

13 There's no question that Mr. Estrada never got to
14 the countertop, that he never got inside. He couldn't. There
10:21AM 15 was no adequate parking. The first access barrier prevented
16 that. But under *Doran vs. 7-Eleven*, he has the right and
17 legitimate standing to sue for all access barriers, including
18 that countertop that was discovered by Mr. Cornell before the
19 lawsuit was filed.

10:21AM 20 There is nothing wrong with these ADA cases; there
21 is something wrong with the DA's prosecution. We ask that the
22 Court address that.

23 THE COURT: Thank you. I appreciate that.

24 Mr. Darnell, if I stick with the tentative -- and
10:21AM 25 I'll go back and look at a lot of things and think about this a

1 lot more, but if I stick with the tentative, it looked to me
2 like I should dismiss the case entirely. I know you don't want
3 me to stick with the tentative. But if I do and apply the
4 *Younger* abstention, should I dismiss the case? And let me also
10:22AM 5 point out that that would also give you a right to appeal.

6 MR. DARNELL: We would have a right to appeal.

7 So --

8 THE COURT: I shouldn't say it gives you that --
9 that's not my issue. It may or may not.

10:22AM 10 MR. DARNELL: The appellate issues are inappropriate
11 for me to discuss at this stage. Obviously, that should not
12 influence the Court's opinion, and I don't think it would. I
13 do recognize the procedural status of the case.

14 I think it would be wrong to dismiss, but it's the
10:22AM 15 same reason why it would be wrong to apply *Younger* and not
16 apply an exception.

17 THE COURT: But the question is if I apply *Younger*,
18 if I deem it appropriate to abstain, should I dismiss the case?

19 MR. DARNELL: My position is no, you should not.
10:23AM 20 But it's the same reason why you should not abstain. It's
21 because the third cause of action is for violation of the ADA
22 anti-retaliation statute.

23 THE COURT: Okay. That's kind of where I was going.

24 MR. DARNELL: Abstention means that that statute is
10:23AM 25 meaningless. Congress created an abrogation. They abrogated.

1 They carved this out. That statute is intended to sue states,
2 public entities that violate the ADA. By exercising
3 abstention, by not applying *Younger* exception, this Court would
4 essentially be rendering that statute meaningless, which is
10:23AM 5 another reason why we think abstention is inappropriate.

6 THE COURT: Let me play devil's advocate. The
7 remedies you seek in the third cause of action are the same
8 remedies that we're talking about that you're seeking through
9 this motion for preliminary injunction.

10:24AM 10 MR. DARNELL: The remedy is injunctive relief under
11 the ADA statute, yes.

12 THE COURT: And, specifically, injunctive relief
13 pertaining to the criminal prosecution.

14 MR. DARNELL: It's the same remedy, yes, in
10:24AM 15 application and in law, if I understand the question.

16 THE COURT: So why does the existence of the third
17 cause of action counsel against dismissing the entire case if I
18 deem *Younger* abstention applicable?

19 MR. DARNELL: Because -- well, the way the question
10:24AM 20 is framed, I cannot answer that. My logic is that the third
21 cause of action and the federal right that is provided by
22 Congress under that cause of action is another reason why
23 abstention is inappropriate. But, fundamentally, if you take
24 it one step further -- no, I don't think I'm -- let me put it
10:25AM 25 this way. If the Court exercises abstention, I do not have an

1 independent argument for why dismissal is inappropriate.

2 THE COURT: Okay. Thank you.

3 Mr. Smith, same question. I think I know your
4 answer. If I deem *Younger* abstention appropriate here, should
10:25AM 5 I dismiss the case?

6 MR. SMITH: I believe you should, Your Honor. The
7 remedy is injunctive relief in the lawsuit. So yes --

8 MR. DARNELL: Your Honor --

9 And I apologize for interrupting.

10:25AM 10 MR. SMITH: It's all right.

11 MR. DARNELL: But so we're all operating on the same
12 facts, I believe, technically, the remedy that is sought on the
13 third and fourth cause of action, they're both under the ADA
14 statute injunctive relief and declaratory relief.

10:26AM 15 THE COURT: So does the existence of the -- so the
16 existence of the declaratory relief claims/remedy, I think,
17 would affect whether I would apply the anti-injunction statute,
18 28 U.S.C., Section 2283. But I think *Younger* abstention is
19 broader than that.

10:26AM 20 Do you agree with that, Mr. Darnell.

21 MR. DARNELL: I cannot disagree, Your Honor.

22 THE COURT: Okay. So one final question,
23 Mr. Darnell. There's been a lot of back-and-forth about the
24 evidence that the parties have submitted. The plaintiffs have
10:26AM 25 submitted evidence that they contend demonstrates that there is

1 no criminal violation here, that the prosecution -- criminal
2 prosecution should be abandoned. And, if it's maintained, it
3 will result in acquittal and potential remedies down the road
4 for wrongful criminal prosecution.

10:27AM 5 The defendant doesn't believe some of the evidence
6 that plaintiffs have submitted. Defendant points to, among
7 other things, Mr. Estrada's statements during his -- the
8 interview, when he may or may not have been arrested, as being
9 particularly damning.

10:27AM 10 And I acknowledge that plaintiffs challenge the
11 applicability of those statements for a lot of reasons,
12 including Mr. Estrada's health, et cetera. My -- I'll tell you
13 what I'm thinking. I try to be transparent here. The
14 existence of all these disputes of fact, doesn't that counsel
10:28AM 15 in favor of abstention? Shouldn't I allow the criminal
16 prosecution to dig into that? Maybe it will result in a
17 successful demurrer. I don't know. Maybe it won't.

18 But shouldn't that whole dynamic play out in the
19 state court criminal prosecution case?

10:28AM 20 MR. DARNELL: No is the short answer. The existence
21 of disputed facts before Your Honor and relating to the core
22 issues is the reason the Court needs to look at them more
23 closely and to evaluate the likelihood of success on the
24 merits; the likelihood that the DA has -- truly has an
10:29AM 25 objectively reasonable belief that their claims are valid and

1 legitimate; the likelihood that these claims will fit and not
2 violate ADA Ninth Circuit precedent.

3 The fact that there's a dispute is the reason the
4 Court needs to look more closely at them. It's not a reason to
10:29AM 5 abstain or allow this case to be decided by 12 jurors on,
6 again, a federal ADA statute, federal standing issue,
7 Ninth Circuit complex case law and history, all on which this
8 Court is well-versed and understands and has the expertise and
9 has been directed by other Ninth Circuit cases to decide in
10:29AM 10 every ADA case.

11 THE COURT: All right. Thank you.

12 Mr. Smith, did you want to respond to that same
13 question? The existence of all disputes of fact, does that not
14 counsel in favor of *Younger* abstention?

10:30AM 15 MR. SMITH: It does, Your Honor. That's why there
16 is criminal judges in state courts.

17 THE COURT: Can you get close to the microphone.

18 MR. SMITH: Yeah. I'm sorry, Your Honor. I should
19 stand.

10:30AM 20 Yeah. No, that's why we do abstain to the state
21 courts where these facts can be resolved on these state crimes.
22 The defendant has one position in the criminal case; the
23 prosecution has the other. Both will present their evidence.
24 And either a judge or criminal juries can decide.

10:30AM 25 THE COURT: All right. Thank you both. I really

1 appreciate the robust briefing and your thorough preparation
2 and your argument here today. I'm going to take this motion
3 under submission. My minute order memorializing this hearing
4 will relate that and, also, as I said, grant defendants' motion
10:31AM 5 application request to file a sur-reply.

6 What else do we need to accomplish here today?

7 Anything else, Mr. Darnell or Mr. Reddy?

8 MR. DARNELL: No, Your Honor. And I appreciate the
9 Court's time to allow us to be heard on all of these issues

10:31AM 10 today as well as for providing a tentative, which is very
11 helpful to frame the issues.

12 THE COURT: Thank you.

13 Mr. Smith, anything else?

14 MR. SMITH: Yeah, likewise. Nothing, Your Honor.

10:31AM 15 Thank you very much. Thank you for your time and your staff.

16 THE COURT: Thank you. Have a great rest of the day
17 and a great weekend.

18 **(Proceedings concluded at 10:31 a.m.)**

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